

13 FOR THE PLAINTIFF:

14 UNITED STATES ATTORNEY'S OFFICE
15 District of New Mexico
16 201 Third Street, Northwest, Suite 900
17 Albuquerque, New Mexico 87102
18 BY: MR. LOUIS E. VALENCIA

17

18 FOR THE DEFENDANT:

19 FEDERAL PUBLIC DEFENDER'S OFFICE
20 District of New Mexico
21 111 Lomas Boulevard, Northwest, Suite 501
Albuquerque, New Mexico 87102
21 BY: MR. RICHARD A. WINTERBOTTOM

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23 Proceedings recorded by mechanical stenography,
transcript produced by computer.

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1 SENTENCING HEARING

2 (Court in session at 10:40 a.m.)

3 THE COURT: United States of America v. LeRoy
4 Lucero, Criminal Cause 06-2083.

5 MR. VALENCIA: Good morning, Your Honor.

6 Louis Valencia on behalf of the United States.

7 MR. WINTERBOTTOM: Richard Winterbottom, Your
8 Honor, on behalf of Mr. Lucero, and he is present.

9 THE COURT: All right. Please come forward.

10 Have you had an opportunity to review the
11 presentence report with your client?

12 MR. WINTERBOTTOM: I have, Judge.

13 THE COURT: Anything in the presentence report
14 you specifically wish to call to my attention?

15 MR. WINTERBOTTOM: Not necessarily, Judge.

16 THE COURT: That doesn't tell me anything,
17 "not necessarily." Either you do or you don't.

18 MR. WINTERBOTTOM: I don't, Judge.

19 THE COURT: All right. Anything you wish to
20 say on behalf of your client before I impose sentence?21 MR. WINTERBOTTOM: Judge, the presentence
22 report finds Mr. Lucero to be an armed career criminal.
23 His guidelines are 180 months to 210 months. The
24 government, pursuant to the plea agreement, has agreed
25 to recommend 180 months.

1 We would ask the Court to sentence Mr. Lucero
2 to 180 months.

3 I would ask the Court to recommend the
4 500-hour drug program, and also that he be designated to
5 the Victorville USP.

6 Judge, sometimes I feel like I am not really
7 capable of doing much for my client, and I'm afraid
8 that's the case here. Mr. Lucero has a fairly
9 significant criminal history. His mother was a drug
10 addict. He grew up basically institutionalized.

11 My sense is -- and I've known LeRoy now for
12 almost nine months -- that after being in the New Mexico
13 penitentiary system for years and years and years, he
14 has learned something.

15 He has an eight-month-old son who was here in
16 court a few minutes ago, who he absolutely dotes upon.
17 He has a wife who is a hard-working woman and is loyal
18 to him.

19 He came out of prison. He was on parole. He
20 found a job at a window installation company. He was
21 doing pretty well. He wasn't using drugs, as far as
22 anyone knows.

23 And he really had some goals. He hopes he
24 maintains those during the course of his incarceration.
25 He's going to be younger than I am when he gets out, and

1 I'm encouraging him to realize that he still has a
2 future with his family and his kids, and hopefully he
3 can still salvage some parenthood and bring them up
4 better than perhaps he was.

5 THE COURT: All right. Do you have anything
6 you wish to say?

7 THE DEFENDANT: Yes, sir, I do.

8 First of all, I would like to apologize to my
9 wife for leaving her alone to raise my son; and my
10 father, for putting him into this. I think this is a
11 harsh punishment. I was trying to protect my family,
12 trying to do it the legal way.

13 Yes, I did possess a firearm. I shouldn't
14 have had it, but somebody was trying to break into my
15 house and hurt my family. I didn't know what to do.

16 That's it.

17 THE COURT: All right. The Court has reviewed
18 the presentence report factual findings and has
19 considered the sentencing guideline applications and the
20 factors set forth in 18 United States Code Section
21 3553(a)(1) through (7), including the finding that the
22 defendant is an armed career criminal.

23 The offense level is 30, the criminal history
24 category is VI. Pursuant to Section 5G1.1, the
25 guideline imprisonment range is 180 to 210 months. The

1 Court notes the felony is possession of a firearm.

2 As to the indictment, Criminal Cause 06-2083,
3 the defendant, LeRoy Lucero, is committed to the custody
4 of the Bureau of Prisons for a term of 180 months.

5 The Court recommends the defendant participate
6 in the Bureau of Prisons 500-hour drug and alcohol
7 treatment program.

8 The defendant is placed on supervised release
9 for a term of three years.

10 The defendant must comply with the standard
11 conditions of supervised release and the following
12 mandatory conditions:

13 The defendant will submit to DNA collection in
14 compliance with the statutory requirements while
15 incarcerated in the Bureau of Prisons or at the
16 direction of the United States Probation Office.

17 The defendant shall not possess, have under
18 his control, or have access to any firearm, ammunition,
19 explosive device, or other dangerous weapons, as defined
20 by federal, state, or local law.

21 The following special condition will also be
22 imposed:

23 The defendant must participate in and
24 successfully complete a substance abuse treatment
25 program, which may include drug testing, outpatient

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1 counseling, or residential placement.

23 I will not impose a fine. I will impose a
24 special assessment.

25 Consistent with the stipulation in the plea

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1 agreement, the defendant forfeits his rights, title, and
2 interest to a Mossberg Model 500A 12-gauge shotgun,
3 Serial Number K117708, and two Winchester brand 12-gauge
4 cartridges of ammunition.

5 The defendant will pay a special assessment of
6 \$100, which is due and payable immediately.

7 Pursuant to 18 United States Code Section
8 3742(a), within ten days of the entry of the judgment
9 you have the right to appeal the final sentence of this
10 Court.

11 You have the right to apply for leave to
12 appeal in forma pauperis if you are unable to pay the
13 cost of an appeal.

14 I'll recommend that you be incarcerated in
15 Victorville, California.

16 Now, let me give you a little friendly advice.
17 When you get out of prison, don't go back to Las Vegas.
18 I mean, it's done nothing but get you in trouble. So
19 you figure out someplace else you want to live, out of
20 state here. I mean, out of state or in state, but not
21 in Las Vegas. Because if you go back to Vegas, you're
22 going to fall into the same friends, same thing.

23 Well, I won't see you in 15 years, I won't be
24 around, but the next judge will. So stay out of
25 trouble.

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1 You can earn 56 days a year good time, is it?

2 MR. WINTERBOTTOM: Fifty-four.

3 THE COURT: Fifty-four. So your 180 months
4 can be cut down a fair amount if you stay out of
5 trouble. So stay out of trouble, and don't go back to
6 Vegas. All right?

7 Good luck to you.

8 MR. WINTERBOTTOM: Thank you, Your Honor.

9 (Proceedings concluded at 10:47 p.m.)

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1 UNITED STATES OF AMERICA

2 DISTRICT OF NEW MEXICO

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4 CERTIFICATE OF OFFICIAL REPORTER

5 I, Julie Goehl, RDR, CRR, RPR, RMR,
6 New Mexico CCR #95, Federal Official Realtime Court
7 Reporter, in and for the United States District Court
8 for the District of New Mexico, do hereby certify that
9 pursuant to Section 753, Title 28, United States Code,
10 that the foregoing is a true and correct transcript of
11 the stenographically reported proceedings held in the
12 above-entitled matter and that the transcript page
13 format is in conformance with the regulations of the
14 Judicial Conference of the United States.

15 Dated this 8th day of February, 2016.

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